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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,229	10/31/2003	Peter Thurmann	5253-27	3382

27799 7590 01/06/2005

COHEN, PONTANI, LIEBERMAN & PAVANE  
551 FIFTH AVENUE  
SUITE 1210  
NEW YORK, NY 10176

EXAMINER

SCHWARTZ, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/699,229

Applicant(s)

THURMANN ET AL.

Examiner

Christopher P. Schwartz

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10/15/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-21 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13 is/are rejected.
- 7) ☒ Claim(s) 8-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

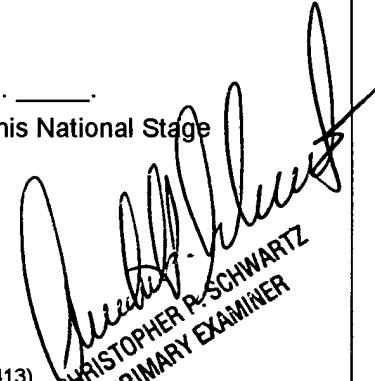
- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

  
CHRISTOPHER P. SCHWARTZ  
PRIMARY EXAMINER

### DETAILED ACTION

1. Applicant's amendment filed 10/15/04 has been received and considered. Claim 2 has been canceled.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-7,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freitag et al. in view of Kaufmann et al.

Regarding claim 1 Freitag et al. discloses a piston cylinder unit having a heat shrunk sleeve 10 surrounding a cylinder, as clearly shown in the several embodiments. Note also element 36 which extends into the gap. Note the end wall and gap (not labeled) but as per applicant's.

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Freitag et al. however lacks showing the sleeve 10 "enclosing" the end face (in the area of element 4) and extending into the gap.

Kaufmann et al. provides this general teaching.

One having ordinary skill in the art at the time of the invention would have found it obvious to have extended the sleeve 10 of Freitag et al. into the gap (not labeled but above element 4 between the rod and the tube) to further seal the rod from the environment or act as a "wiper" (as is notoriously well known in the art) for the rod to remove debris. Elements 10 and 36 could be made integral, as fairly suggested by Kaufmann et al.

Regarding claims 3-4 these requirements are met. The end ring is at 4 in Freitag et al.

Regarding claim 5 the end ring 4 has an "annular channel" through which the piston rod extends and can be said to "face" the ring shaped gap above it, as broadly claimed.

Regarding claim 6 these requirements are met.

Regarding claim 7 the element below element 4 in Freitag et al. could also be interpreted as the end ring, which also comprises an annular channel which meets or renders obvious the limitations of claim 7 in that the width of the channel is not limited.

Regarding claim 13, as broadly claimed, these requirements are met.

***Allowable Subject Matter***

5. Claims 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 14-21 are allowable over the prior art of record.

***Response to Arguments***

7. Applicant's arguments filed 10/15/04 have been fully considered but they are not persuasive. Applicant's arguments have been addressed in the action above.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Schwartz whose telephone number is 703-308-0576. The examiner can normally be reached on M-F 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cps  
1/3/05